

Declaration for Mental Health Treatment



A Guide For Providers

**The Tennessee Department of Mental Health and
Developmental Disabilities developed this document based
on Tennessee Code Annotated Title 33, Chapter 6, Part 10.**

DECLARATION FOR MENTAL HEALTH TREATMENT: A GUIDE FOR PROVIDERS

WHAT IS A DECLARATION FOR MENTAL HEALTH TREATMENT?

A Declaration for Mental Health Treatment (Tennessee Code Annotated Title 33, Chapter 6, Part 10) is a means to allow persons to plan ahead for services they might receive and to say how they want to be treated or not be treated when they lack capacity to make informed decisions about their mental health treatment. A Declaration also may assist service providers in giving appropriate treatment. Any competent individual may make a Declaration for Mental Health Treatment, if she/he is sixteen (16) years old or an emancipated minor and has the capacity to make informed mental health treatment decisions.

The Declaration for Mental Health Treatment may express the person's preferences and instructions about participation in mental health treatment, including hospitalization for a maximum of fifteen days, psychoactive and other medications, and electroconvulsive and other convulsive therapies. The Declaration may include consent or refusal to permit mental health treatment and other instructions and information for mental health providers. A mental health service provider may not condition admission to a mental health facility or providing mental or physical health treatment or insurance on a requirement that a person execute a Declaration for Mental Health Treatment.

AS A MENTAL HEALTH SERVICE PROVIDER, WHAT ARE MY RESPONSIBILITIES?

Under the legal requirements for a Declaration for Mental Health Treatment, physicians and other mental health service providers (referred to below as mental health service provider) have a number of responsibilities:

1. A mental health service provider must determine a service recipient's capacity to make informed treatment decisions:
 - Two examiners (two physicians, or a physician with expertise in psychiatry by training, education, or experience and a doctoral level psychologist with health service provider designation) may determine that the person, due to a diagnosed mental illness, is unable to make an informed decision about mental health treatment because the person is not able to understand the proposed procedure, its risks and benefits, and the available alternative procedures. If a person is unable to make an informed decision about his/her mental health treatment, a Declaration for Mental Health Treatment may be invoked. (For information on the capacity assessment process, see Tennessee Department of Mental Health and Developmental Disabilities rules on capacity.)

OR

- A court may have already determined (in a proceeding under Title 34, Chapters 1, 2, and 3, Tenn. Code Ann.) that a person is unable to make an informed decision about mental health treatment and appointed a guardian or conservator. If a person is unable to make a decision about his/her mental health treatment, a Declaration for Mental Health Treatment may be invoked.

2. Generally, for matters addressed in the Declaration, a mental health service provider must provide services consistent with the Declaration when the service recipient lacks capacity to make informed mental health treatment decisions. A Declaration is effective and overrides the decisions of a guardian or conservator for any mental health treatment covered in the Declaration. A conservator with authority to make mental health treatment decisions may make decisions regarding mental health services not covered in a Declaration.
3. A mental health service provider must have written policies and procedures, applicable to all competent individuals, 16 years of age or older, who receive mental health treatment from the service provider. The mental health service provider must provide service recipients the following information and material, in written form, without recommendation:
 - (A) Materials provided by the state on the right to make informed mental health treatment decisions, including the right to accept or refuse mental health treatment and the right to execute a Declaration for Mental Health Treatment;
 - (B) Information on the provider's policies about the right to make informed mental health treatment decisions;
 - (C) Declaration for Mental Health Treatment form; and
 - (D) The name of a person who can provide additional information about the forms for a Declaration for Mental Health Treatment.
4. A mental health service provider must:
 - (A) Determine if a service recipient has a Declaration for Mental Health Treatment;
 - (B) Document a Declaration for Mental Health Treatment in a prominent place in the service recipient's record;
 - (C) Comply with the law relating to Declaration for Mental Health Treatment;
 - (D) Educate the staff and the community on issues relating to Declarations for Mental Health Treatment;
 - (E) Provide the service recipient a copy of a Declaration for Mental Health Treatment form unless the mental health service provider believes that the service recipient has received a copy of a Declaration form within the last twelve (12) month period or has a validly executed Declaration;
 - (F) Provide any new or additional mental health service provider a copy of a Declaration or notice of revocation of a Declaration;
 - (G) Contact Tennessee Department of Mental Health and Developmental Disabilities for a determination that a service recipient's Declaration for Mental Health Treatment from another state is as protective of the service recipient as Title 33, Chapter 6, Part 10, Tenn. Code Ann.; and
 - (H) Honor a Declaration for Mental Health Treatment executed in another state if it complies with the provisions in Title 33, Chapter 6, Part 10, Tenn. Code Ann.

ARE THERE MENTAL HEALTH SERVICE PROVIDER PENALTIES ASSOCIATED WITH A DECLARATION FOR MENTAL HEALTH TREATMENT?

A mental health service provider, who in good faith provides or does not provide mental health treatment based on a Declaration for Mental Health Treatment, is not subject to criminal prosecution, civil liability, or professional disciplinary action, if the Declaration is later found to be invalid. It is an offense (Class A misdemeanor) for a person, without authorization of the service recipient, to intentionally alter, forge, conceal, or destroy a Declaration for Mental Health Treatment, the revocation of a Declaration, or any other evidence or document reflecting the service recipient's desires and interests, with the intent or effect of affecting the service recipient's mental health treatment.

The requirements in 3 and 4 (B)-(E) on page 2 are in addition to any requirements that may be imposed under federal law and should be interpreted in a manner consistent with federal law. A mental health service provider or any employee or agent of a mental health service provider is not required to act in a manner inconsistent with federal law or contrary to the mental health service provider's religious or philosophical beliefs. No mental health service provider is subject to criminal prosecution or civil liability for failure to comply with 3 and 4 (B)-(E) on page 2.

ARE THERE CIRCUMSTANCES WHEN THE MENTAL HEALTH SERVICE PROVIDER DOES NOT HAVE TO HONOR A DECLARATION FOR MENTAL HEALTH TREATMENT?

- If there is an **emergency** endangering the person's health or life, the mental health service provider can choose not to follow the preference described in the service recipient's Declaration.
- If a mental health service provider cannot implement the decisions in the Declaration as a matter of conscience, the mental health service provider may choose not to treat the person. The mental health service provider must then document his/her actions in the service recipient's record and arrange for the prompt transfer of the care of the service recipient to another mental health service provider.
- If the service recipient has been involuntarily committed to an inpatient treatment facility under Title 33, Chapter 6, Part 4 or 5, Tenn. Code Ann., and a Treatment Review Committee authorizes the treatment, the mental health service provider may choose not to follow the preferences described in the service recipient's Declaration.

HOW IS A DECLARATION FOR MENTAL HEALTH TREATMENT COMPLETED?

Any competent individual, sixteen (16) years of age or older, or an emancipated minor with capacity to make informed mental health treatment decisions, can put into effect a Declaration for Mental Health Treatment by completing a form indicating the service recipient's preferences for mental health treatment. The service recipient and two witnesses must sign the form at which time the Declaration is effective. The witnesses must be adults and know the service recipient.

Witnesses *cannot* be:

- ✧ The service recipient's mental health service provider;
- ✧ An employee of the service recipient's mental health service provider; or
- ✧ An employee or operator of a mental health facility.

At least one (1) of the witnesses must be neither a relative by blood, marriage or adoption, nor a person entitled to any portion of the estate upon the service recipient's death under any will or codicil of the service recipient in existence at the time the Declaration is signed.

The form does not need to be notarized and cannot be signed on the premises of a mental health service provider.

Expiration: A Declaration is effective for two (2) years from the date it is signed, or the service recipient may choose to have an expiration date shorter than two years. After a Declaration expires, the service recipient must complete a new form for the expression of his/her treatment preferences.

Revocation: If a service recipient has the capacity to make informed decisions about his/her treatment, the service recipient may revoke the Declaration in whole, or in part, at any time orally, or in writing, or may change his/her Declaration at any time in writing by revoking the Declaration and starting over with a new form for Declaration for Mental Health Treatment. The mental health service provider must document the revocation in the service recipient's record.

ARE THERE DECLARATION FOR MENTAL HEALTH TREATMENT FORMS ?

The Tennessee Department of Mental Health and Developmental Disabilities has developed a form for Declaration for Mental Health Treatment under Title 33, Chapter 6, Part 10, Tenn. Code Ann. Other forms may be used to make a Declaration for Mental Health Treatment, but they must be consistent with Title 33, Chapter 6, Part 10, Tenn. Code Ann. A Declaration for Mental Health Treatment may be expressed in or incorporated into a durable power of attorney for health care that is executed under Title 34, Chapter 6, Part 2, Tenn. Code Ann. on or after March 1, 2001. Such a Declaration can be revoked for mental health service under the conditions in Title 33, Chapter 6, Part 10, Tenn. Code Ann.

WHERE CAN I FIND THE DEPARTMENT'S FORM?

The form is available on the Internet at the Tennessee Department of Mental Health and Developmental Disabilities' website: http://www.state.tn.us/mental/mhdd_lawforms.html. The form is also available from the Tennessee Department of Mental Health and Developmental Disabilities' Office of Consumer Affairs: 1-800-560-5767.

If you have questions or comments on this document, you may contact TDMHDD Office of Consumer Affairs by e-mail OCA.MHDD@state.tn.us.



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The TDMHDD is committed to the principles of equal opportunity, equal access, and affirmative action. Contact the department's EEO/AA Coordinator at (616) 532-6580, The Title VI Coordinator at (615) 532-6700, or the ADA Coordinator at (615) 532-6700 for further information. Persons with hearing impairment should call (615) 532-6612.